IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.414 TO 417 OF 2005
CONNECTED WITH
COMPANY APPLICATION NOS.276/2005 TO 279/2005

M/s. KEC International Limited.

M/s. Bespoke Finvest Limited.

M/s. KEC Infrastructures Ltd.

M/s. KEC Holdings Limited.

....Petitioners.

Mr. Iqbal Chagla with Mr. Virag Tulzapurkar i/by Rajesh Shah and Company for the Petitioners.

Mr.C.J. Joy with R.C. Master for the Regional Director.

Mr. Paritosh Jaiswal with Nandini Menon for KEC Employees Union.

CORAM : A.M. KHANWILKAR,J.
DATED : 27/9/2005.

PC:

1. These petitions are for sanctioning arrangement embodied in the Composite Scheme of Arrangement between KEC International Ltd. ("KEC or the Petitioner Company"), Bespoke Finvest Limited ("(Bespoke"), KEC Infrastructure Limited ("Operating company") and KEC Holdings Ltd. ("Invest Company") and their respective shareholders (hereinafter referred to as the "scheme"), where under the power transmission business and investment division as defined in the scheme shall stand transferred to KEC Infrastructures

Limited and KEC Holdings Limited respectively and Bespoke will get merged into KEC Holdings Limited, with effect from the close of business hours on 31.3.2005 (hereinafter referred to as the Appointed Date") in terms of the scheme without any further act or deed pursuant to the provisions of Sections 394 of the Act.

2. The petitioner company was incorporated under the Indian Companies Act,1913 on 7th day of May 1945 under the name and style of Kamani Engineering Corporation Limited.The name was later on changed to KEC International Limited on 5th June, 1984. The petitioner company after incorporation commenced its business of setting up power transmission lines, sub-stations and power distribution networks. On the other hand, Bespoke Finvest Limited (Bespoke or the Second Transferor Company) was incorporated under the Companies Act,1956 on 24.6.1993 under the name and style of Bespoke Finvest Private Limited. The name was later on changed to Bespoke Finvest Limited on 4.10.1994. Bespoke is engaged in investment activities. The operating company KEC Infrastructures Ltd. was incorporated under the Companies Act,1956 as a Public Limited Company on 18th March,2005 under the name and style KEC Infrastructures Ltd. The Operating Company has been incorporated specifically for the purpose of Scheme and it has not

commenced any business as is mentioned in the petition. Whereas, Holdings Ltd. (Invest Company) was incorporated under the Companies Act,1956 as Public Limited Company on 18th March,2005 under the name and style of KEC Holdings Ltd. The Invest Company has been incorporated specifically for the purpose of Scheme. It has not commenced any business as is mentioned in the petition.

3. The Petitioner Company is one of the largest power transmission EPG Companies in the world. It is stated that the petitioner company incurred losses in the past; however, it has successfully turned around during financial year 2003.04. In view of the continuous growth and development and future prospects of Power Transmission Business, the Board of Directors have embarked upon a financial restructuring. The purpose of such restructuring was to provide focus to Power Transmission business and other businesses. The proposed scheme envisages Sale of Power Transmission business of KEC to operating Company in consideration of the shares to be issued by the Operating Company to KEC; KEC to distribute to its shareholders such shares received from the Operating Company; Sale of the Investment of KEC to Invest Company in consideration of equity shares to be issued by the Invest Company to KEC

and Invest Company to become subsidiary of KEC and merger of Bespoke into Invest Company. The Board of Directors of the Petitioner company accordingly passed resolution on 22.3.2005 resolving that subject to the sanction of the High Court and permission of the Central Government and other authorities that may be necessary, a Composite Scheme of Arrangement between the petitioner company and the Bespoke and the Operating Company and Invest Company be approved. It is not necessary to advert to all the provisions of the proposed scheme which have been so approved except to refer the provisions regarding the staff, workmen and employees; As the objection to the proposed scheme has been set up at the instance of the workmen union, whose members are the employees of the KEC as also its shareholders. The scheme envisages that on the Scheme becoming operative, all staff, workmen and employees of KEC in service on the effective date shall be deemed to have become staff, workmen and employees of Operating Co. without any break in their service and on the basis of continuity of service; and the terms and condition of their employment with Operating Company shall not be less favourable than those applicable to them with reference to KEC on the effective date. It is expressly provided that, on the scheme becoming effective, Provident Fund, Gratuity Fund, Superannuation fund or any other Special

fund or Trust created or existing for the benefit of the staff, workmen and employees of KEC shall become the trusts/funds of Operating Company for all purposes whatsoever in relation to the administration or operation of such Fund or Funds or in relation to the obligation to make contributions to the said fund or funds in accordance with the provisions thereof as per the terms provided in the respective Trust Deeds, if any, to the end and intent that all rights, duties, powers and obligations of KEC in relation to such fund or funds shall become those of Operating Company. It is clarified that the services of the staff, workmen, and employees of KEC will be treated as having been continuous for the purpose of the said fund or funds. Provision is also made regarding legal proceedings to the effect that all legal proceedings of whatsoever nature by or against KEC pending and/or arising at the appointed date and relating to the Power Transmission Business of KEC as and from the Effective Date shall be continued and enforced by or against the Operating Company in the manner and to the same extent as would or might have been continued and enforced by or against KEC and from the effective date. Further, the Operating Company shall and may, if required, initiate any legal proceedings in relation to the Power Transmission Business in the name of KEC.

. Be that as it may, the scheme as proposed was to be considered by the Equity Shareholders, Preference Shareholders, Secured Creditors and Unsecured Creditors. Accordingly, company application was made before this court being Company Application No.276/2005 for necessary directions in that behalf. This court on 29.4.2005 directed to convene the meeting of all the Equity Shareholders, Preference Shareholders, Secured Creditors and Unsecured Creditors at the appointed venue on 14.6.2005 for the purpose of considering and approving with or without any modification arrangement embodied in the Composite Scheme of Arrangement. The said order directed that Mr. H.V. Goenka, Chairman of the petitioner company, and failing him, Mr. S.S. Thakur, Director of the Petitioner company and failing him, Mr. A.T. Vaswani, Director of the Petitioner company and failing him, Mr. A.T. Vaswani, Director of the petitioner company shall be the Chairman of the aforesaid meeting or any adjournment or adjournments thereof and should report the result thereof to this court. In terms of the said order, individual notices were issued to all concerned about the meeting alongwith relevant material. Besides, notice regarding meeting was also advertised in local newspaper. On the Scheduled date, time and place, the meeting of Equity

Shareholders, Preference Shareholders, Secured Creditors and Unsecured Creditors of the Petitioner Company was duly convened and held. In the said meeting, in terms of order dated 29.4.2005, Mr. H.V. Goenka acted as Chairman of the meeting of the Equity Shareholders, Preference Shareholders, Secured Creditors and Unsecured Creditors; and reported the result of the said meeting to this court by Chairman's report dated 27.6.2005 along with affidavit in support thereof. The report graphically describes as to the manner in which meeting was conducted. It mentions that the Chairman announced that the petitioner company had received 44 authorisations and 371 proxies representing 40.565 of the Paid Up Capital of the petitioner company and that proxies/authorizations registers are kept for inspection at the venue. It then mentions that coram fixed for the meeting was 5 Equity Share holders. Whereas, in all 556 Equity Shareholders attended the said meeting in person or by proxies or by authorised representative holding 1,53,70,714 Equity Shares having face value of Rs.15,37,07,140. Accordingly, meeting was called to order. The report also mentions that when the Equity Shareholders were invited, few shareholders spoke on the proposed scheme. Some of them requested for certain clarifications in relation to the scheme, which were provided by the Chairman with the help of representative

of the petitioner company. The report then mentions that one of the Shareholder Mr. Gautam Mody holding 50 Equity Shares raised query and proposed an amendment seeking adjournment of the meeting. It is stated that he also filed two letters signed by himself and another shareholder holding 50 Equity Shares in this behalf. The report then mentions that as the request for adjournment was not supported by any other shareholder, same was declined. Thereafter, process of meeting commenced after the procedure was duly explained. The report also mentions that two independent persons were appointed as scrutineers to scrutiny the ballot papers namely Mr. H.K. Sudhakara,Advocate from Khaitan & Co. and Mr. P.N. Parikh as Equity Shareholder. The report also mentions that none of the Equity Shareholder objected to the appointment of the said Scrutineers. Thereafter, polling proceeded and the Chairman informed the Equity Shareholders that the result of the poll will be declared on 15.6.2005 at the registered office of the company. The report then mentions that after the scrutiny of the ballot papers, the scrutineers submitted their report which indicates that 491 ballots representing 1,52,84,361 Equity Shares having face value of Rs.15,28,43,610 were found to have been cast. Out of these 446 Equity Shareholders holding 1,52,82,470 Equity Shares of Rs.10/- each, representing in value the sum of

Rs.15,28,24,700/-constituting 93.70% in number and representing 99.9924% in value, present in person or by proxy or by authorised representative voted in favour of the Scheme. Whereas, 30 Equity Shareholders holding 1,155 Equity Shares of Rs.10 each, representing in value the sum of Rs.11,550/- constituting 6.3% in number and representing 0.0076% in value, present in person or by proxy or by authorised representative voted against the Scheme; And 5 ballot papers representing 14 Equity Shares were found to be invalid. The report then mentions that as Equity Shareholders constituting a majority in number and representing more than three fourth in the value of shares, present and voting, either in person or by proxy or by authorised representative, voted in favour of the Scheme. In other words, the Scheme of Arrangement has been approved with majority in number and three fourth in value of the Equity Shareholders attending the meeting. The Chairman appointed for the meeting has submitted similar reports with regard to meetings of the Preference Shareholders, Secured Creditors and Unsecured Creditors. It is not necessary for me to advert to the contents of those reports in the present petition. Suffice it to observe that, the resolution has been voted in favour with the statutory majority for all those meetings. On the basis of the above compliance, the present petitions have been

filed for the reliefs claimed therein essentially for sanction of the arrangement embodied in the Composite Scheme of Arrangement.

4. These petitions have been opposed only by the Employees' union. The authorities namely Regional Director as well as Official Liquidator have made it clear that they have no objection for the approval of the proposed scheme and will submit to the orders of this court. According to the reports filed, all procedural compliances have been made by the company. The Employees' Union alone is opposing the scheme on the assertion that its members are entitled to oppose the scheme in two capacities namely, employees of the company and; secondly, being Equity Shareholders of the Company. It is however, fairly accepted during the course of argument by the counsel for the workmen union that the scheme is not challenged on the ground that it will cause prejudice to the workmen as such. Besides, there is no challenge on the ground that the scheme is unfair, unjust and unreasonable. However, the challenge is essentially limited to the ground that the meeting was not properly conducted which can be substantiated from the record maintained by the company. I shall straight way deal with the objections taken by the counsel for the workmen union.

5. Ordinarily, as all statutory compliances have been made as is accepted by the authorities through their counsel; coupled with the fact that the resolution has been approved in the meeting with overwhelming majority which is far exceeding the statutory requirement, the petitions ought to be allowed. However, as mentioned earlier, this petition is resisted by the workmen union. I shall now deal with the objections taken on behalf of the workmen union to oppose this petition in seriatim.

6. The first objection is that the present scheme and this petition is resorted to by the petitioner company during the pendency of the appeal before the court at the instance of the company in relation to the similar request for sanction of a scheme under Section 391 read with 394 of the Act for compromise/arrangement with RPG Transmissions Ltd. arising from Company Petition No.1083 of 1997 read with Company Application No.570 of 1997. That petition was dismissed on 6.8.1999. Against that decision, matter has been carried in appeal by the petitioner company which is still pending for hearing. In this backdrop, it is argued that unless the said appeal was to be disposed of, the present petition cannot proceed as the question of amalgamation or merger of KEC International Ltd. with RPG Transmission Ltd.

is still unresolved. It is argued that the arrangement provided in the subject scheme does not make any provision for the consequences arising out of petitioner succeeding in the said appeal. It is submitted that if the said appeal was to succeed, it would result in the company owning its own shares due to the cross holding of shares between the petitioner and RPG Transmission ltd. as per the arrangement provided in the Scheme of 1997. In my opinion, however, there is no substance in this objection. In the first place, it is to be noted that the present scheme is completely independent of the earlier Scheme of 1997. Besides, there can be no dispute that the petitioner company has already made statement and assured this court that the appeal pending before the Division Bench of this court in respect of the proposed Scheme of 1997 will be abandoned in so far as merits is concerned. In other words, the petitioner company is disposed to abandon the scheme which was proposed in the year 1997, which is the subject matter in the pending appeal. Viewed in this perspective, there is no overlapping of proceeding in relation to the subject matter of the present petition. The counsel for the workmen union however, contends that the petitioner company has only assured that they will not pursue the Scheme of 1997 but has not translated that assurance by withdrawing the appeal.There is no substance even in

this objection. It is open to the petitioner to pursue the pending appeal to the extent of certain observations made in the earlier decision dated 6.8.1999, while rejecting the company petition. That is possible even while company was to abandon the Scheme of 1997. In otherwords, pendency of the appeal in relation to Scheme of 1997 can be no impediment in formulating a new scheme which is an independent scheme and which will have to be considered by the court on its own merits. Therefore, the objection about the maintainability of the present scheme and the petition on this count will have to be negatived.

7. It was then contended on behalf of the workmen union that this court in its order dated 6.8.1999 (which is reported in 2000 CLC Page 642 Bom.) directed issuance of show cause notice to Mr.H.P.Goenka and other Senior Officers of the company as to why criminal prosecution should not be launched against them for offences of fabricating false evidence and giving false evidence. As mentioned earlier, abandonment of the said scheme is an option which can be exercised by the company; and at the same time, it will be open to the company to pursue the appeal subject to the order of the appeal court, in so far as remarks or the finding on the basis of which the said adverse remarks have been made by the Single

Judge of this Court, which aspect will have to be considered in the said appeal. Besides, issuance of show cause notice against Mr. Goenka or other officers of the company will have no bearing on the merits of the present scheme. Indeed, Mr.Goenka acted as the Chairman in the meeting convened to consider the present scheme for approval However, it cannot be overlooked that Mr.Goenka chaired the said meeting under the orders of this court, which were passed after the issuance of abovesaid show cause notice. Moreover, those orders have not been challenged by any one but allowed to become final. Viewed in this perspective, the objection is devoid of merits.

8. The next objection on behalf of the workers Union is that there is non compliance of Section 393 of the Act in the present case. It is stated that there is no full and proper disclosure of the interest of Shri. H.V. Goenka either as member, creditor of the company or otherwise and the effect on those interests; on the present scheme, in so far as it is different from the effect on the like interests of other persons. It is submitted that the scheme as presented does not fully and properly disclose the interests of the holdings of the RPG group of companies in the petitioner company and the effect on their share holding, if the present scheme

is allowed. It is submitted that Shri. H.V. Goenka is statutorily required to disclose the extent of his family and group share holdings, pre and post the present scheme. To support the above submission, reliance was placed on the details provided in the explanatory statement under Section 393 of the Companies Act furnished alongwith the notice especially on Paragraphs-36 and 37 thereof. In Para 37, the extent of share holding of the directors of the company either singularly or jointly are mentioned. Except against the name of Mr.Mirchandani and R.D. Chandak, holdings of all other directors has been shown as Nil, which is obviously misleading information. The argument canvassed on behalf of the workmen union seems to be attractive at the first blush. However, what is relevant for our purpose is to ascertain whether there has been non compliance within the meaning of Section 393 (1)(a) of the Act.That section has been construed by the Division Bench of our High Court in the case of **All India Blue Star Employees' Foundation Vs. Blue Star Ltd. reported in (2001) 40 CLA 46 (Bom.)** In Paragraph 13 of the said decision, it is observed that- What Section 393(1)(a) requires is that, if any director has any material interest in the terms of compromise arrangement and the interest of the director is of a different nature than the interest of the Shareholders

and the compromise has different effect on the interest of the shareholders as compared to the interest of the director, then such material interest has to be disclosed. In the present case, the workmen union has failed to produce any material whatsoever to even remotely suggest that any of the director of the company including Mr. H.V. Goenka has any such material interest in the terms of the scheme or that the terms in the compromise were likely to have any effect on such interest in a manner different from the effect on the interests of other shareholders. If it is so, there is no substance in the argument that the scheme ought to fail for non compliance of Section 393 as contended. Therefore, the decision pressed into service on behalf of the workmen union, in my view would be of no avail to the Respondent Union.

10. In my opinion, the counsel for the petitioner has rightly pressed into service decision of the Apex Court in the case of **Miheer H. Mofatlal Vs. Mofatlal Industries Ltd. reported in A.I.R.1997 S.C.506.** In Para 28 of the said decision Apex Court has considered the scope of adjudication of the issues in the proceeding under Section 391 of the Act. It has been observed that the role of the court is like an umpire in a game of cricket who has to see that both the teams

play their game according to the rules and do not overstep the limits. It is observed that Company Court's jurisdiction to the extent is peripheral and supervisory and not appellate. It is also observed that on reading the relevant provisions of Section 391 and 393, it is amply clear that that Company Court which is called upon to sanction such a scheme has not merely to go by the ispe dixit of the majority of the shareholders or creditors or their respective classes who might have voted in favour of the scheme by requisite majority but the court has to consider the pros and cons of the scheme with a view to finding out whether the scheme is fair, just and reasonable and is not contrary to any provisions of law and it does not violate any public policy. The Apex Court has then articulated the broad contours of such jurisdiction of the Company Court in sanctioning the scheme arrangement under Section 391 of the Act, which are reproduced thus :

> "1. The sanctioning court has to see to it that all the requisite statutory procedure for supporting such a scheme has been complied with and that the requisite meetings as contemplated by Section 391(1) (a) have been held.
>
> 2. That the scheme put up for sanction of the court is backed up by the requisite majority vote as required by Section 391, sub section (2).
>
> 3. That the concerned meeting of the

creditors or members or any class of them had the relevant material to enable the voters to arrive at an informed decision for approving the scheme in question. That the majority decision of the concerned class of voters is just and fair to the class as a whole so as to legitimately bind even the dissenting members of that class.

4. That all necessary material indicated by Section 393(1)(a) is placed before the voters at the concerned meetings and contemplated by Section 391, sub-section (1).

5. That all the requisite material contemplated by the proviso to sub section (23) of Section 391 of the Act is placed before the court by the concerned applicant seeking sanction for such a scheme and the court gets satisfied about the same.

6. That the proposed scheme of compromise and arrangement is not found to be violative of any provision of law and is not contrary to public policy. For ascertaining the real purpose underlying the Scheme with a view to be satisfied on this aspect, the court, if necessary, can pierce the veil of apparent corporate purpose underlying the scheme and can judiciously X ray the same.

7. That the Company Court has also to satisfy itself that members or class of members of creditors or class of creditors, as the came may be, were acting bonafide and in good faith and were not coercing the minority in order to promote any interest adverse to that of the latter comprising of the same class whom they purported to represent.

8. That the scheme as a whole is also found to be just, fair and reasonable from the point of view, of prudent men of business taking commercial decision artificial to the class represented by them for whom the scheme is meant.

9. Once the aforesaid broad parameters about the requirement of a scheme for getting sanction of the court are found to have been met, the court will no further jurisdiction to

> sit in appeal over the commercial wisdom of the majority of the class of persons who with their open eyes have given their approval to the scheme even if in the view of the court there would be a better scheme for the company and its members or creditors for whom the scheme is framed. The court cannot refuse to sanction such a scheme on that ground as it would otherwise amount to the Court exercising appellate jurisdiction over the scheme rather than its supervisory jurisdiction.
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> The aforesaid parameters of the scope and ambit of the jurisdiction of the Company Court which is called upon to sanction a Scheme of Compromise and Arrangement are not exhaustive but only broadly illustrative of the contours of the Court’s jurisdiction."

Bearing in mind the legal position expressed in the above said decision, I shall examine the objections of the workmen union. One of the grievance made by the workmen union is that they were deprived of sufficient opportunity to take inspection of the relevant record so as to identify the illegalities and irregularities committed in the conduct of the meeting and passing of the resolution to approve the proposed scheme. This grievance, in my opinion, is without any substance. This is so because, when the matter came up for hearing at the first instance on 9.9.2005, grievance was made on behalf of the union that inspection of relevant documents was not offered by the management. Therefore, necessary order was passed. It is seen from the record that in terms of the said directions inspection of all the relevant documents was provided to the workmen

union, irrespective of the objection of the company that the persons who were taking inspection were not competent persons. Nevertheless, inspection was provided to the representatives of the workmen union on 13.9.2005 between 2.00p.m. to 8.00p.m.; on 14.9.2005 between 12.00noon to 8.p.m.; on 15th Sept.2005 between 1 2.00noon to 6.55p.m.; and on 19.9.2005 between 11.00a.m. to 5.00p.m. Inspection was provided on 19. 9.2005 pursuant to the order passed by me on the previous date of hearing, making it more than clear that no further time will be granted on any count. Inspite of such opportunity granted, grievance was made on behalf of the workmen union that time allotted was insufficient so as to inspect and cross check the attendance register with Proxy Ballot Poll papers. There is no substance in this grievance. The total votes polled as stated in the Commissioner’s report are only 476. To cross check the relevant entries for those votes, it is incomprehensible that inspection can be continued for any number of days. To get over this position, it was submitted that during the inspection,the representative of the workmen union could inspect only 272 ballot papers out of total 491 ballots, 110 proxy slips out of a total 307 proxy slips, 484 attendance slips out of a total of 537 and the remaining could not be inspected due to paucity of time. However,

it is not the case of Union that all documents were not made available at the earliest after inspection commenced pursuant to the directions given by this court, nor it is their case that, the entry of limited persons was permitted thereby making it impossible for them to complete the inspection in the allotted time. As mentioned earlier, in my opinion, time allotted to workers union to inspect the relevant record was more than sufficient. For, as is rightly contended by the petitioner, even the legislature has recognised only 48 hours time for taking inspection of the relevant document as sufficient. Be that as it may, the approach of the workmen union was to undertake roving enquiry without a specific case or incident about any irregularity or illegality or fraud committed by the company during the conduct of the meeting. As mentioned earlier, there is no grievance at all that the scheme is unfair, just or unreasonable. The only grievance is about non following of proper procedure and mistake in maintaining the record. The gravamen of the grievance of the workmen union is that the court will have to go by the past record of the company which has been the ground reckoned by this court in the reported decision to reject the earlier scheme and show cause notice was issued against the officers of the company. This argument, in my opinion, will have to be negatived. The

issue involved in the present petition with regard to the scheme in question cannot be decided on the basis of the events which had unfolded in the past. The present scheme will have to stand or fall on its own. So far as the statutory requirements are concerned, the same are fully complied with. The grievance regarding some error in the record here or there cannot undo the decision of the overwhelming majority of the shareholders. It will have to be borne in mind that such objection is taken at the instance of the workmen union whose small holding cannot negate the decision taken by the overwhelming majority in the meeting in question. It is not the case of the workmen union that the present scheme would act to the prejudice of their members in any manner, who are incidentally shareholders of the company. The grievance of inadequate time made available for inspection of the relevant record, in my opinion, is only to create a facade for undertaking a roving enquiry. That cannot be countenanced.

11. According to the workmen union there is serious discrepancy in the record maintained with regard to the conduct of the meeting. The attendance slips of 303 purported shareholders does not carry the name of the shareholders. The same has been left blank. This objection has been rightly countered by the petitioner

on the argument that the petitioner cannot have any control over that situation. In that, if a shareholder did not fill in his name on the attendance slip, that cannot be the basis to assume that he was not present at the meeting. No such specific case is brought to my notice. In any case, this grievance overlooks the fact that the attendance slips refers to folio number, which, in my view is sufficient compliance.

. It is then contended that there was no correct and proper method adopted by the company at the meeting venue to ensure that the person attending the meeting was in fact the share holder or the duly constituted proxy of the said share holder. This objection is devoid of merits. No specific case has been pointed out as to which unauthorised person(s) had attended the meeting. Taking advantage of incomplete attendance slips, it cannot be argued that unauthorised persons were allowed to enter the hall. I find substance in the argument of the petitioner that the independent scrutineers have discharged their responsibility of ensuring that person attending the meeting and voting was an authorised person. One of the scrutineer was Advocate from Khaitan & Company and the other was from SEBI registered institution. There is no reason to assume that the scrutineers allowed unauthorised persons

to remain present and vote at the meeting, especially when no specific case has been pointed out by the workmen union and more so, no objection regarding presence of any unauthorised person was raised at the meeting. In other words, the subject objection being vague and belated one cannot be countenanced. Accordingly, the grievance of the workmen union that strangers were put up by the management and allowed to vote in favour of the resolution is devoid of merits.

12. The counsel for the workmen union would then contend that the Proxy forms have not been properly submitted. The same have not been properly stamped and cancelled and the votes cast under these proxies ought to be cancelled. There is no substance even in this objection. No specific case has been pointed out to support such objection. In the first place, the objection regarding incomplete proxy forms could have been taken by the share holders in the meeting, which has not been done. In law, it was open to the share holders to take inspection of the proxy forms within specified time.i.e. 48 hours before the meeting. That has not been done. No objection was taken during the meeting. Similarly, no specific case has been referred to substantiate that the proxy vote will have to be treated as unauthorised. On the other hand, I have

perused the file produced before me by the counsel for the company containing proxy forms. The particulars have been duly filled in and were scrutinized by the concerned scrutineers. There is no reason to accept the objection that the proxy as well as share holders both voted on the same folio. Not a single case of this kind has been substantiated before me. On the other hand, it is obvious from the record and the report of the scrutineers that voting was permitted on the basis of port folio number. There is not even a single case brought to my notice that on the same port folio two votes were cast by same person or other share holder or proxy. In other words, the objection taken by the workmen union is figment of their imagination.

. The next objection taken on behalf of the workmen union is that the authorization letters in favour of persons who in fact voted in the meeting is not in accordance with the provisions of law. It was argued that the authorization letters have named several persons. That was impermissible. It was argued that the authorization letter could have been issued only in favour of one person. This submission was made good by relying on Clause 92 of the Memorandum of Articles of Association of the petitioner company which reads thus :

> "92. A Corporation which is a member of the Company may by resolution of the Directors, authorise any of its Officials or any other person to act as its representative at any meeting of the Company, and the person so authorised shall be entitled to exercise the same powers on behalf of the company which he represents as it he were an individual shareholders of the Company."

Reliance is also placed on Section 187 of the Act to contend that from the plain reading of the said provision, it would appear that only one person can be authorised to represent the Corporation at the meeting of the Company. In my opinion, however, neither Section 187 of the Act nor Clause 92 reproduced above can be construed to restrict the right to nominate more than one person in order of preference to represent the Corporation at meetings of the company. In the present case, the resolution mentions the names of several persons who were authorised to represent the respective Corporation at the meeting. That however, does not mean that on the particular port folio held by the Corporation more than one person named in the said authorization has voted. It is a matter of record that only one amongst the several persons mentioned in the authorisation letters has voted. There is nothing in the Act or Rules which precludes such a course to be adopted. On the other hand, I find substance in the argument advanced on behalf of the petitioner that the

Corporation may name one or more alternative individuals to be appointed as its representative to attend and vote at the meeting. The only restriction is that only one such named person will be eligible to remain present and vote in the meeting in respect of specific port folio of the Corporation. This is the course adopted in the present case.

. To get over this position, the counsel for the Union argued that authorization letters are bogus and stereo type document, which will have to be discarded and for which reason the votes cast on the basis of such authorization will have to be held unauthorised. The argument that authorization letters are computer generated copies without any seal and therefore, do not have semblence of genuineness only deserves to be stated to be rejected. Record pertaining to authorization letter issued by different Corporations was produced before me. True it is that the form of the said letters is more or less same. That, however, does not mean that the same can be discarded on that count. Inasmuch as, each of the authorization letter is on the letter head of the respective corporation duly signed. It refers to the resolution passed by the concerned Corporation. Merely because the authorization letters are similar in contents, that does not mean that no authorization was

given in favour of the persons named in the said letters by the concerned Corporation. Interestingly, no such objection was taken at the meeting. This objection is raised for the first time in reply to the present petition. In my view, the authorization letters which were produced before me substantially comply the legal requirement and cannot be said to be invalid as such.

13. It is then contended on behalf of the workmen union that the petitioner has taken inconsistent stand in the petition as also incorrect statement made in the Chairman's report that there were 44-authorization letters, when in fact only 26-letters existed on record. This submission is an argument of desperation. Indeed, it is stated that the Company had received 44 Authorization letters; However, the position has been clarified by the company from the record produced before me, which fact is also stated on affidavit, that in all 26-authorization letters were received in relation to 44-port folios. It is stated on affidavit that out of 26 Corporation share holders, some of the share holders had multiple votes at different point of time. Accordingly, 26 letters covered authorization of all 44 authorization of the said Body Corporation. Accordingly, there is no substance even in this objection.

14. It was then contended that more than one person named in the authorization letter was present in the meeting. However, the person named below or next in order of preference has voted and not the person who has been named as first preference. It is contended that therefore, those votes will have to be treated as invalid. I find no substance even in this submission. Merely because more than one person is named in the authorization, it does not follow that the person named next in order of preference will be disentitled to attend and vote in respect of specific port folio. In other words, even if the person who has been named as first preference has attended the same meeting- but in respect of some other or specific port folio, will not preclude the person next in order of preference to attend and vote in respect of some other folio. That course is permissible as it will result in only one vote cast in respect of respective port folio.

15. It was then contended that Mr. H.V. Goenka has been named as one of the authorised person to represent the concerned Corporations- But he has not voted in the meeting. This submission clearly overlooks that Mr. H.V. Gonna was acting as Chairman in the meeting, for which reason, he could not have voted though named as

representative of the concerned Corporation. That, however, will not invalidate the vote cast by another representative so authorised by the concerned Corporation who were otherwise entitled to depute its representative to vote on its behalf.

16. It was then argued that Mr. H. V. Goenka was incompetent to act as Chairman of the meeting especially when show cause notice has been issued by this court on the earlier occasion and which matter is still pending consideration before the appellate court. I find no substance even in this objection. In the first place, Mr. H.V. Goenka was nominated as Chairman by this court in terms of order dated 29.4.2005. That order has not been challenged so far but has been allowed to become final. No such objection was taken at the meeting by any of the share holder. It would have been a different matter, if the order dated 29.4.2005 was to be challenged or such objection was taken at the time in the meeting. It is too late in the day for the members of the workmen union to raise such a plea that too for the first time at this stage of the proceeding. This objection is an after thought objection put forth on behalf of the workmen union and will have to be rejected.

17. It was then contended that Shri. Janak Mathurdas, whose name is not found in the attendance slip has voted at the meeting on 13 occasions. No proxy form is on record authorising Janak Mathurdas to vote on behalf of any share holder. It was also argued that it was not open to permit multiple voting. There is no substance in the objection regarding multiple voting. The counsel for the petitioner has rightly relied on the decision in the case of **Dinesh Vrajlal Lakhani Vs. Parke Davis (India) Ltd. reported in (2003) 47 SS 180 (Bom.).** In Paragraph 12 of this decision, court has rejected similar argument. In other words, the argument that multiple voting was impermissible has been negatived in this decision. The Court has held that it is open to cast more than one vote in respect of different folios of shareholders. This decision is also an authority on the point that one amongst joint shareholders can vote. Paragraph 28 onwards this decision deals with the issue of counting votes- taking into account, votes in proportion to the shares on the date of equity capital of the concerned shareholders.

. In so far as Janak Mathurdas is concerned, it is the case of the petitioner company that he himself is the share holder and did not vote as proxy as is suggested. This is not countered. Besides, he voted for 13 times

as he held 13 different folios. The presence of Janak Mathurdas at the meeting cannot be ignored only because his name does not appear in the attendance slips. In the circumstances, there is no merit even in the above objection.

18. It was next contended that Pundlik Bodke one of the member of the Union had attended the meeting. However, in the inspection taken, it is revealed that his ballot was missing. Initially, no affidavit of Bodke was filed. However, during the course of hearing, the counsel for the Union produced the affidavit of Bodke sworn at Nagpur which mentions that he had attended the meeting and cast his vote. In the first place, Bodke holds only 30 shares. Secondly, the fact that Bodke attended the meeting has no relevance with not finding ballot in his name. Remaining present at the meeting is one thing and exercising ballot is another. Although Bodke has stated on affidavit that he did exercise his ballot, it is possible that such affidavit has been filed only to create shadow of doubt. If Bodke had actually voted at the meeting, there is no reason why his vote will not be traced from the ballot box. I find substance in the argument of the petitioner that if it was the case of manipulation of ballot box, in that case, even the other negative votes cast would have been

found missing or manipulated. One vote of Bodke who only had 30 shares, obviously will make no difference to the outcome of the decision. The resolution was voted in favour by 446 Equity Share holders holding Equity Shares of 10/- each representing in value the sum of Rs.15,28,24,700 constituting 93.70% in number and representing 99.9924% in value present in person by proxy or by authorised representative voted in favour of the scheme. Whereas, Mr. Bodke who only had 30 Equity Shares, his votes were to be added to the negative votes mentioned in the Chairman's report, it will increase to 31 Equity Shareholders holding 1205 equity shares of 10/- each representing in value sum of Rs.12050/- which will be constituting less than 7% in number and below 1% in value. That will make no difference. It is not the case of the workmen that the entire holding of its members if put together would exceed 1/3rd of the holding so as to reduce the majority votes less than the statutory requirement of 2/3rd. Therefore, I find no substance in the objection advanced on behalf of the workmen union that the case in hand is one of manipulation of ballot papers. Accepting such argument in the fact situation of the case will be far fetched. To my mind, several grievances made before this court are nothing but figment of imagination, without there being any substance; and in any case will not

materially alter the decision to be taken on the point in issue. It would have been a different matter if the workmen were to demonstrate that the scheme undermines their interest either as workmen or employee share holding as a class or that they were treated differently from the other Equity Share holders. Nothing of this kind is even remotely suggested. Viewed in this perspective, objection raised on behalf of the Union will have to be rejected.

19. It was then contended that there are other irregularities of over writing on the attendance slips and the ballot papers. Besides, the same are not properly numbered and it gives rise to an inference that there has been manipulation and interpolation of the record, which reflects on the conduct of the meeting. I find no substance in this submission. As mentioned earlier, attempt of the workmen union is to invite this court to make a roving enquiry. The fact remains that overwhelming majority of the voters are in favour of the scheme. Some error or mistake here or there in the record, which has no substantial bearing on the point in issue, cannot be the basis to over turn the decision of the overwhelming majority.

20. It was then contended that 272 Ballot papers have

been cast by a Single Shareholder , who holds the said shares in various permutations and combinations. It was contended that these ballots will have to be discarded since the votes have been cast by persons other than those whose names stand first in the register of share holders, though such first named persons were present at the meeting. In the earlier discussion, I have already covered this aspect. This objection will have to be rejected because there is no law to preclude the joint share holders to remain present and vote in respect of independent folios.

21. It was then contended that the Scrutineers have failed to discharge their obligations and for which reason the entire poll process and the results declared thereon is vitiated. I see no substance in this submission. The discrepancies brought to my notice are not of such a nature that it would impinge upon the fairness of the meeting. Some error or discrepancy here or there in the record does not mean that the entire meeting is vitiated. On the other hand, from the record it appears that meeting was properly convened after statutory compliances. The persons who had attended the meeting were allowed to speak. Objections were duly considered and the Chairman proceeded with the meeting. Two independent Scrutineers were appointed, who in turn

have examined the authority of the respective person attending the meeting to vote. In this view of the matter, it is not a case of fraud as such, but at best of some mistake here or there which however, does not impinge upon the fairness of the decision taken by the overwhelming majority present and voted. Moreover, no other person has come forward making grievance that his vote has been manipulated in any manner. Accordingly, there is no substance in the objections.

22. It was next contended that the company has not disclosed significant changes in its position and assets holdings and investments between the date on which the scheme was announced i.e. 22.3.2005 and that the notice issued to the shareholders on 6.5.2005. It is submitted that only if such information was divulged, members can be said to have taken an informed decision. There is no substance even in this grievance. In so far as requirement of disclosure is concerned, I have already taken the view that company has made compliance of the provisions under Section 391(a) of the Act. No provision is brought to my notice which obligates disclosure of the kind pressed into service on behalf of the workmen union. Accordingly, there is no substance in this objection.

23. It was then argued that the valuation report dated 22.3.2005 was sent to the company on the same date when the board meeting was held. It is not open for this court to go into the subjective decision arrived at by the Board of Directors on the scheme under consideration. It is too much to assume that the Board of Directors were not conscious of the contents of the valuation report which was placed before them, even though the meeting was held on the same date. No provision of law is brought to my notice which requires submission of such valuation report in advance or before specified period. In any case, no such grievance was made at the meeting. Accordingly, there is no substance even in this submission.

24. It was then argued that the latest financial information has not been disclosed, for which reason, the scheme ought to fail. Reliance was placed on the decision in the case of **Aradhana Beverages and Foods Company Ltd. reported in 1998 Company Cases Vol...93 Page 899, in the case of Bharati Synthetics Ltd. Vs. Bank of India and another reported in 1995 Company Cases Vol.82 Page 437, 2201 Company Cases Vol. 104 Page 371(supra)** to contend that the latest financial position ought to have been made available to the members before the meeting which was held on 14.6.2005. Whereas, only

statement of accounts as on 31.3.2004 of the petitioner company were made available. I find no substance in this submission. The fact remains that Audited statement of accounts as on 31.3.2004 of the petitioner company were made available alongwith notice for meeting to be held on 14.6.2005. Moreover, the Board of Directors took decision by Resolution dated 22.3.2005 and the appointed date was stated to be 31.3.2005. In that sense, Audited Statement of Accounts as on 31.3.2004 would be the latest and relevant financial statement to be considered by this court besides the unaudited statement of accounts as on 31.3.2005. The petitioner company has also produced unaudited financial statement as on 31.3. 2005. In that sense, there is compliance of the requirement of furnishing latest financial information. Therefore, there is no substance in this objection. The decisions pressed into service are inapplicable to the facts of the present case.

25. During the course of argument, initially, the petitioner raised the objection regarding the locus standi of the Union. In response to this objection, reliance is placed on the decisions reported in the case of **KEC International Ltd.Vs. Kamani Employees Union and others reported in 2000 CLC 642 (Bom) as well as in the case of Blue Star reported in 2001 Company Cases Vol.104**

Page 371 and in the case of National Textile Workers Union Vs. P.R. Ramkrishnan reported in A.I.R.1983 S.C. 75 to contend that the workmen have locus to appear and oppose the scheme of arrangement. On the other hand the counsel for the petitioner has placed reliance on the unreported decision of Single Judge of this Court in the case of Piramal Holdings Ltd. in Company Petition No. 130 of 2005 dated 5.5.2005, wherein, it is held that the workmen Union have no locus standi to intervene in the proceeding under Sections 391 to 394 of the Companies Act. Indeed, in view of the decision pressed into service on behalf of workmen union, the union can appear even in the proceeding relating to Scheme of Arrangement when sanctioning the scheme will result in affecting their existing rights. Be that as it may, as the members of the workmen union are incidentally Equity Shareholders of the petitioner company, they are entitled to participate in the present proceeding and object to the sanctioning of the scheme on available grounds. Accordingly, it is not necessary for this court to elaborate on this contention. Besides, I have already considered all the objections taken on behalf of the workmen union.

26. That takes me to the last submission canvassed on behalf of the petitioner. According to the petitioner

company, the objections taken are abuse of process of law by the workmen union. All possible objections have been taken with a view to create shadow of doubt and call upon this court to undertake roving enquiry. I am in agreement with this submission of the petitioner, that the trade union has taken upon itself a role much bigger than that of a trade union, virtually creating hindrance in the smooth conduct of business of the company. For this reason union should be directed to pay costs while allowing this petition as was the approach adopted by the Division Bench of this court in the case of Blue Star Company (See Para 21).

27. Accordingly, these petitions would succeed with costs. Company Petition No.414 of 2005 is made absolute with costs in terms of prayer clause (a) to (u), Company Petition No.415 of 2005 is made absolute with costs in terms of prayer clause (a) to (g), Company Petition No.416 of 2005 is made absolute with costs in terms of prayer clause (a) to (o) and Company Petition No.417 of 2005 is made absolute with costs in terms of prayer clause (a) to (j). Ordered accordingly.

28. At this stage, the counsel for the workmen union prays that the operation of this order be stayed to enable the union to take up the matter to appeal, if so

advised. This order not to be given effect for ten weeks from today.

(A.M. KHANWILKAR, J.)